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“JUSTICE YOU GET IN THE NEXT LIFE. IN THIS LIFE, YOU JUST HAVE THE LAW.”

Award-winning New Yorker' writer Philip Gourevitch on the legal fancy footwork and chicanery that enabled torture to become standard operating procedure at Abu Ghraib

BY REBECCA NEWMAN

PHILIP GOUREVITCH IS NOT a man to mince his words. A long-standing writer on the *The New Yorker*, and editor of *The Paris Review*, Gourevitch is most famous for non-fiction writing, especially his account of the Rwandan genocide. His latest book, *Standard Operating Procedure*, tells the story behind the notorious photographs of prisoner abuse taken at Abu Ghraib. While Gourevitch does not seek to exonerate the actions of the soldiers, he explores the policy decisions that enabled the barbaric regime that was to shock the world – in particular the re-interpretation of the Geneva Convention effected by George Bush's legal team.

Standard Operating Procedure opens with two senior American officers attempting to find bunk beds with which to refurbish the cells of Iraqi prison, Abu Ghraib. Under Saddam Hussein's regime, Abu Ghraib had become synonymous with torture and execution. The officers are filled with shining-eyed optimism and a belief that bringing American justice to the region would make immeasurable improvements to the prison regime. They even had an Abu Ghraib open day to show off the new facilities, in August 2003.

However, by October 2003, US soldiers were using the infamous 'interrogation' techniques that achieved worldwide notoriety when photographs, published later, showed naked hooded prisoners in

scenes of horrifying humiliation and abuse.

"It was convenient for people to regard the photos as the isolated kinkiness of the individuals involved," explains Gourevitch, his deep forehead frowning as he chooses his words. "The story was explained away as the depraved actions of a sick few."

Since the scandal of the photographs broke he had felt troubled that the world was seemingly ignoring just how poorly trained soldiers, some of whom were still teenagers, had been vilified as monsters, with little consideration being given to the role of the military command structure. His reservations were justified, he says, when old friend documentary-maker Errol Morris got in touch. Morris had just completed filming more than 200

“BRIGADIER GENERAL JANIS KARPINSKI FIRST HEARD THE TERM ‘SECURITY DETAINEE’ IN IRAQ IN SUMMER 2003. SHE UNDERSTOOD THIS TO BE ‘A CONVENIENCE TO SIDESTEP THE LAW – TO SIDESTEP THE REQUIREMENTS OF THE GENEVA CONVENTION’”



hours of interviews with the photographer-soldiers. Going through the transcripts, Gourevitch started to piece together the background to the story. “When I started to listen to the interviews, I realised that there were details that we hadn’t heard: legal memos, adjudications by different lawyers and finessing of policy. I found a paper trail going right to the top of the administration.”

How did torture become the ‘Standard Operating Procedure’ of the book title? In a sense, claims Gourevitch, it began in Afghanistan when, five days after 9/11, vice president Dick Cheney

announced: “It is a mean, nasty, dangerous, dirty business out there, and we have to operate in that arena... We need to make sure we haven’t tied the hands of our intelligence communities in terms of accomplishing their mission.”

To that end, in *Standard Operating Procedure*, Gourevitch recounts how Cheney’s legal counsel David Addington laid out his considered view in a secret memorandum. In this, Addington argued against several centuries of American executive practice and constitutional jurisprudence by asserting that the president essentially enjoyed absolute power

in wartime – including the authority to sanction controversial torture techniques.

In 2002 the President decided that rather than being prisoners of war, prisoners taken in the war on terror would be classified as “unlawful combatants”, and as such would be beyond the protection of the Geneva Convention. The White House Counsel Alberto Gonzales justified this decision by concluding that the “new kind of war” – that is, against al-Qaeda terrorists – rendered the rules laid down in the Geneva Convention about how enemy prisoners should be treated “quaint” and “obsolete”. In so doing, Alberto Gonzales effectively granted the US President immunity for any acts carried out by the military during the war on terror.

Standard Operating Procedure details how Gonzales said the decision “substantially reduces the threat of domestic criminal prosecution under the War Crimes Act”, a law in the US code that makes violations of the Third Geneva Convention (last revised in 1949) by US citizens a war crime, punishable by anything from a fine to death.

In Iraq, the Geneva Convention remained law. After all, this time the US was dealing with an army rather than a terrorist network. But, after the May Day declaration of the end of major combat, there were hundreds of civilians still in military custody – with more being rounded up in sweeps of the street – who were being kept because they were deemed to have some kind of intelligence value. Many had been arrested without charge and were being held indefinitely, in cells that were too small and not fit for purpose – in flagrant breach of Geneva. A new policy had to be conjured up. This time, the prisoners were called “security detainees”.

Standard Operating Procedure quotes Brigadier General Janis Karpinski of the Army Reserves as saying she first heard the term “security detainee” when she arrived in Iraq in the summer of 2003... she came to understand that calling someone a security detainee “was meant as a convenience to sidestep the law, to sidestep the requirements of the Geneva Convention”. A damning exposé of the *realpolitik* behind the US Government’s legal fancy footwork – and from a senior commander on the ground tasked with implementing the policy.

Gourevitch pinpoints the exact legal escape clause upon which the government relied. “The Administration based the new category of security detainee on a little thing in the fourth clause of



SPEAKING OUT: Philip Gourevitch made his name writing about Rwanda before turning to the abuses of international law in Iraq

“THE HAWKISH RIGHT OF THE ADMINISTRATION WOULD TALK OF THE GENEVA CONVENTION AS THOUGH IT WERE SOME KIND OF EUROPEAN THING... THE FACT IS, IT IS THE BASIS OF US MILITARY DOCTRINE. IT'S OUR LAW”

the Geneva Convention, which says that in time of occupation, an occupying power may suspend some of the protection of the saboteurs, in the name of military necessity and of military need. In this way, they didn't break the law. They identified ambiguities in the Geneva Convention, and delved in headfirst with great relish to create a new set-up.

“The hawkish right of the Administration would talk of the Geneva Convention as though it were some kind of European thing: Geneva... The fact is, it is the basis of US military doctrine: it is our law.”

“There are plenty of lawyers who have got a lot to answer for,” Gourevitch continues. “There is Addington. There's John Yoo, the man who redefined torture, and came up with a so-called rationale for torture; he is now a dean at Berkeley Law School. There's Gonzales. He later went on to become one of our most embarrassing and disgraced attorney-generals. He used political influence to fire a state attorney-general. The Abu Ghraib stuff tainted his reputation, but never got him into serious trouble. In fact, nobody got into serious trouble,” he adds with

emphasis, “except for the kids in the photographs.”

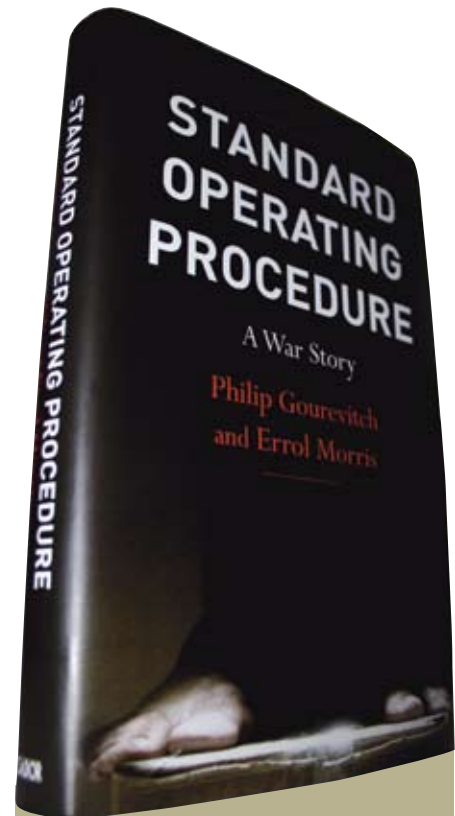
Gourevitch, the Connecticut-born son of a philosophy professor at Wesley University, finds himself drawn to stories which pivot on the idea of justice. After his award-winning account of the 100 days of killings of Tutsi people by the dominant Hutus in Rwanda in 1994, *We Wish To Inform You That Tomorrow We Will Be Killed With All Our Families*, he wrote *A Cold Case*, which followed a Manhattan policeman who reopened and solved a murder case after 27 years.

He sees the characters whose lives he examines as caught in the force of fate. “They are propelled into the darkness of the world, and they make certain unthinking moves which confine and define their destiny.” As a writer he says he feels the need to counter general opinion. “If people want to assert an action is insane, I want to assert the sanity, and extract meaning from things that are conspicuously repellent. We should not turn away in despair. We should grapple with these things. Trying to keep a record of them is not a cure, but not letting them go unheard and unseen seems to me a worthwhile project.”

Worthwhile it may be, it is still a project which leaves him nursing the odd bourbon at night, he says. But despite spending years investigating the most grotesque aspects of human behaviour, he doesn't find it depressing. “I have a fairly pessimistic view of human history. It doesn't get me down. I just have an expectation that there are dark forces we are up against, primordial struggles that define us again and again. These kinds of stories, like those from the Bible or Greek tragedy, express us. I like to think that my books are entertaining. They engage your mind with moments of beauty, of wickedness. There aren't heroes – there's not much that touches the sublime.”

Gourevitch's reporting has left him with limited faith in international human rights but he believes that law is important as a guideline on how to live. “I don't think that human nature is good. But it can be disciplined. In a well-working society, there are levels at which people feel it is in their basic interests to act good, with some sense of common humanity based on a shared self-interest. The law enforces that and structures it. The law is not based on any idea of the goodness of human nature. It is based on the assumption of the venality of human nature, that people will try to get round everything, and the law is there to trip them up. That is why laws matter.”

He holds that justice, in so far as it can apply to Abu Ghraib, must be the attribution of responsibility to the leadership that established the regime that permitted the abuse depicted in *those* photographs. Gourevitch is not holding his breath. He summarises his position thus: we only have political solutions to political problems. “Justice you get in the next life. In this life, you just have the law.” **B-M**



ABU GHRAIB: A LEGAL MINEFIELD

What a mess. In the course of a month five different versions of the interrogation rules – three unsigned drafts, and the two official policies – had been put into circulation at Abu Ghraib. Some of the changes along the way were substantial, but they were never explicitly identified, and there was more to these documents than their lists of interrogation techniques. From one to the next, much of what [Colonel Marc Warren, General Sanchez' legal advisor] called the surrounding “verbiage” – the lawyerly framework discussing the premises and implementations of the rules – had been substantially reworked. For instance, the first draft of the first policy, alongside its discussion of Prisoners of War included vestigial references to unlawful combatants from the Gitmo (Guantánamo Bay) rules. Similarly, the first and second drafts of the second policy, after citing the Fourth Geneva Convention as the grounds for classifying civilians as security detainees, said that security detainees could be denied all Geneva protections “where the exercises of such rights would be prejudicial to the security of Iraq”. But the confusion about the law among those who were laying it down for Abu Ghraib suggested that the interrogation rules were not really rules but a kind of guesswork.. (From ‘Standard Operating Procedure’)